



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.779&780/RJT/2024

(निर्धारण वर्ष / Assessment Years: 2011-12 & 2016-17)

Bhikhalal Prahaladrai Agarwal- HUF, C/o. Sarda & Sarda, Sakar, 1 <sup>st</sup> Floor, Dr. Radha-Krishnan Road, Opp. Rajkumar College Rajkot Rajkot - 360001	Vs.	Assistant Commissioner of Income Tax, Gandhidham Circle IT Office, Plot NO. 32, Sector No. 3, Near IFFCO Colony, Gandhidham Gandhidham - 370201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABHA4638R		
(Assessee)		(Respondent)

Assessee by : Shri Vimal Desai, Ld. AR  
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

**Date of Hearing :** 05/06/2025  
**Date of Pronouncement :** 21/08/2025

**आदेश / ORDER**

**Per, Dr. A. L. Saini, AM**

Captioned two appeals filed by the assessee, pertaining to Assessment years, (A.Ys.) 2011-12 & 2016-17, are directed against the order passed by the Learned Commissioner of Income Tax ( Appeals) [Ld. CIT(A)], National Faceless Appeal Centre (in short "NFAC"), Delhi, vide orders dated 16.09.2024 & 30.08.2024, which in turn arise out of the assessment orders, passed by the assessing officer, under sections 143(3) r.w.s. 148/147/143(3) of the Income Tax Act, 1961.

2. First, we shall take assessee's appeal in ITA No. 779/Rjt/2024, wherein, the grounds of appeal raised by the assessee, are as follows:

*"(1).Order u/s. 143(3) r.w.s. 147 of the Act is bad in law.*



(2). *The reopening of the assessment u/s. 147 of the Act is bad in law.*

(3). *The ld. AO has erred in law as well as on facts in making the addition of the amount of Rs. 27,05,803/- u/s 68 of the Act, on account of alleged undisclosed income. The ld. CIT(A) has erred in law as well as on facts in confirming the same.*

(4). *The ld. CIT(A) has erred in law as well as on facts in dismissing the appeal without considering the paper book filed by the assessee and without providing an opportunity for a personal hearing as mandated by under rule 12(3) of the Faceless Appeal Scheme and therefore the assessee deserves the cost.”*

3. Succinctly, the factual panorama of the case is that assessee before us is HUF and filed its original return of income on 31.12.2011, declaring total income at Rs.20,65,320/-. In response to notice u/s 148, the assessee filed his revised return of income on 21.04.2018, declaring total income of Rs.20,65,320/-. The assessee is an HUF and earns income from house property. The case of assessee was reopened u/s.147 of the Act and a notice under section 148 of the Income tax Act, 1961, was issued on 29.03.2018 and was duly served upon the assessee, through ITBA email facility. Thereafter, a notice u/s 143(2) dated 30.07.2018, was issued and served upon the assessee through ITBA email facility. Further, a notice u/s 142(1) of the Act, along with specific questionnaire, dated 12.09.2018, was issued and served upon the assessee. Thereafter, a show cause dated 14.12.2018 were issued and served upon the assessee. The case of the assessee was reopened by recording reasons. The reasons of reopening of the assessment, (to the extent useful for our analysis) is reproduced below:

*"1. The assessee is an HUF and furnished original return of income on 30.12.2011 declaring therein total income of Rs. 20,65,320/-. In computation of income the assessee has computed LTCG of Rs. 17,33,289/- and claimed exemption u/s 10(38) of the IT Act.*

*2. Information is received from the O/o the Deputy Director of Income Tax (Investigation) Unit -6(2) Mumbai, vide letter No.DDIT(Inv.)- 6(2)/Information/Vax/2017-18 dated 23-03-2018 regarding manipulation in market price of shares of company namely Vax Housing Finance Corporation Limited listed on the Bombay Stock Exchange (BSE) in order to provide accommodation entries of Long*



Term Capital Gain. From the information it is gathered that a mass enquiry was conducted by the department and during the course of enquiry in certain cases, it had come to light that scale manipulation has been / is being done in market price of shares of certain in this company listed on the Bombay Stock Exchange by a group of persons acting as a syndicate in order to provide entries of tax exempt bogus Long Term Capital Gains to large number of persons (beneficiaries) in lieu of unaccounted cash. The basic objective of this racket is to convert black money into white without payment of Income Tax. The unaccounted cash of such persons (beneficiaries) is utilized to purchase shares of such companies at a very high artificially inflated market price. This practice is generally called Accommodation Entry Scam, as the activities of such persons are carried out with prime objective of accommodating unaccounted cash of beneficiaries into their regular books of accounts without paying tax on same.

3. The assessee Shri Bhikkhalal P Agrawal HUF (PAN: AABHA4638R) has sold the shares of "Vax Housing Finance Corporation Limited" for a total sale consideration of Rs. 27,05,802.74 in FY 2010-11/AY 2011-12. This assessee has shown long term capital gain of Rs.17,33,289/- in return of income of Assessment Year 2011-12. These sale transactions in shares are reportedly bogus transactions to give cheque to the assessee in lieu of cash given by the assessee to the cartel of broker and paper entities by routing the cash of the assessee through the paper entities and stock exchange and convert it into non-taxable long term capital gain on shares of manipulated prices. It is also gathered that these beneficiaries pay about 5%-6% of commission in cash to the cartel for obtaining such long-term capital gain. The assessee has done these sale transactions through Kunvarji Finstock Pvt. Ltd. on verifying the BSE data it is noticed that the following persons are counter parties (also known as exit providers) in the above transactions:

Sr.No.	PAN	Name	Traded Value	Total income for AY 2011-12
1	AABCJ1783D	J V STOCK BROKING PRIVATE LIMITED	40880	NO ITR FILED / NO INCOME
2	AYEPS6381G	ABHIJIT SINHA	2856	NO ITR FILED / NO INCOME
3	AMIPA9095P	AMITKUMAR UMASHANKAR AGARWAL	23227.5	8,32,618/-
4	ABBPJ6037E	ANILKUMAR BABULAL JAIN	7600	1,11,760/-
5	ALHPS9957L	ANMOL GOBINDRAM SEKHRI	554.4	97,80,230/-
6	AQQPS8752B	ASHABEN HITESHKUMAR SHAH	40390	NO ITR FILED / NO INCOME
7	ALVPB7260R	ASHOKBHAI GOVINDBHAI BABARIYA	35045	NO ITR FILED / NO INCOME
8	ABZPL2759F	BABU LAL LUHAR	1578	2,80,810/-
	AHNPD2123R	BABUBHAI DARJI	7820	NO ITR FILED / NO INCOME
		ARESHBHAI		
		PANIMADHAI SAHADANI	62151.5	1,15,10,229/-



Shri Bhikhatal Agrawal HUF, AY 2011-12

11	AGKPG0339C	SAHARAN BHARTI GUPTA	31812.5	NO ITR FILED / NO INCOME
12	AATPK5054D	BHAVESH KAPUR	2455.19	NO ITR FILED / NO INCOME
13	AAUPV5942J	BHUPENDRA SURENDRAKUMAR VAID	109495	NO ITR FILED / NO INCOME
14	BGZPS8152H	CHIKESH KANTILAL SHAH	9100	NO ITR FILED / NO INCOME
15	ANEP3728Q	DEEPAK KUMAR AGARWALA	948	NO ITR FILED / NO INCOME
16	BMFPS0375A	DHARMENDRA SHAH VARSHABEN	74000	NO ITR FILED / NO INCOME
17	ACYPP0243N	DILIPBHAI VIRCHANDBHAI PATEL	3300	1,59,048/-
18	AGRPM7560N	DIPESH RAMESHCHANDRA MODI	32190	1,56,470/-
19	AJFPS8783E	DIVYA RAJU SITLANI	20300	NO ITR FILED / NO INCOME
20	AOJPB6269B	GULZARAHEMAD MAHEMUDMIYA BHAVNAGRI	8150	NO ITR FILED / NO INCOME
21	BOKPS6544A	HEMAL NITINKUMAR SHAH	5845	NO ITR FILED / NO INCOME
22	ADQPN0743A	HEMANTKUMAR VINODKUMAR NAGAR	15600	2,18,040/-
23	CMSPS3485D	HIRAL KIRITBHAI SHAH	2220	NO ITR FILED / NO INCOME
24	ABEPJ5520D	HITESHKUMAR M JAIN	69500	1,66,181/-
25	ACLPS2778Q	ILABEN ANANDBHAI SHETH	21300	NO ITR FILED / NO INCOME
26	AAFPG7761B	INDU GUPTA	70	NO ITR FILED / NO INCOME
27	AGDPJ0147L	JAYESH MISHRILAL JAIN	54700	1,71,553/-
28	APXPS6206G	JENISH RAMESHBHAI SHAH	15803.2	NO ITR FILED / NO INCOME
29	APGPS3352A	JIGAR NARENDRABHAI SHAH	12780	NO ITR FILED / NO INCOME
30	AFDPS5797J	JIMITKUMAR DILIPKUMAR SANGHVI	11371.5	NO ITR FILED / NO INCOME
31	APFPP7258B	KAMLESH MAGANBHAI PATEL	3950	NO ITR FILED / NO INCOME
32	AEEP4623H	KANAKMAL KUDAL	39500	NO ITR FILED / NO INCOME
	ALLPS1059F	KOMAL NILESHBHAI SHAH	53900	NO ITR FILED / NO INCOME
		PRISHNA	195000	NO ITR FILED / NO INCOME

BHIKHALAL PRAHALADRAI AGARWAL (HUF)

Shri Bhikhatal Agrawal HUF, AY 2011-12

35	ADYPJ1566D	KATRAGADDA KUNALKUMAR	39000	INCOME 1,68,230/-
36	AALPM1764A	VINODKUMAR JALAN		
37	AAZPJ8127E	KUSUM LATA MITTAL	2736.75	1,87,060/-
		LALITH RAMESH JAIN	6750	NO ITR FILED / NO INCOME
38	BGKPS6557D	MAHESHBHAI VISHNUBHAI SHAH	1050	NO ITR FILED / NO INCOME
39	ACSPV8919M	MANJULABEN DINESHBHAI VADALIYA	7800	NO ITR FILED / NO INCOME
40	AGTPK7575R	MEETA BHAGWANDAS KHEMCHANDANI	74000	17,09,848/-
41	ADBPJ1923H	MUKESHKUMAR MANAKCHANDJI JAIN	14440	NO ITR FILED / NO INCOME
42	ALMPK4873E	NEELAM RAJESH KHANDELWAL	5538	2,54,975/-
43	AFRPT2222B	NILANSHA TIWARI	39600	NO ITR FILED / NO INCOME
44	ALLPS1058E	NILESH ARVINDKUMAR SHAH	75400	NO ITR FILED / NO INCOME
45	AACHT2912A	NILESHKUMAR GUNVANTBHAI THAKKAR HUF	14000	NO ITR FILED / NO INCOME
46	ALLPS1057M	NIRAV ARVINDKUMAR SHAH	237865	NO ITR FILED / NO INCOME
47	AADPS6150N	NISHA GIRISH SHAH	116523	3,47,510/-
48	ALLPS0959G	PARESHBHAI SUNDARLAL SANGANI	15800	2,31,920/-
49	AOSPP0140E	PARESHKUMAR RAMESHBHAI PRAJAPATI	15800	NO ITR FILED / NO INCOME
50	BGIPS2970N	PARMINDER SINGH SIDHU	7900	NO ITR FILED / NO INCOME
51	ABWPR5269F	PRABHAKAR ANANTHRAM RAO	32670	NO ITR FILED / NO INCOME
52	AIKPB4043Q	PRADEEP SINGH BIST	29180	NO ITR FILED / NO INCOME
53	AOLPM8911K	PRASAD PANDURANG MOHITE	7540	NO ITR FILED / NO INCOME
54	AATPA3589R	PRATIK SURESHKUMAR AGRAWAL	32223	1,54,190/-
55	AJBPR5680B	PRAVINSINH JEMUBHARANA	7800	NO ITR FILED / NO INCOME
56	BHEPS5453B	PREMILA SAHASTRABUDDHE	3950	NO ITR FILED / NO INCOME
57	CHBPS0083H	PRISHI JENISH SHAH	96200	1,88,930/-
58	AIBPP6873H	PRIYAM NITINKUMAR PATEL	13972.5	NO ITR FILED / NO INCOME
	AHLPA7460N	PRIYANKA AGARWAL	760.5	2,68,035/-

BHIKHALAL PRAHALADRAI AGARWAL (HUF)



Shri Bhikhatal Agrawal HUF, AY 2011-12

60	ACUPS2039M	PUNAMCHAND SHAH NITIN	27744	1,59,250/-
61	AAUPS2696A	KAJAT SAHDEV	3900	NO ITR FILED / NO INCOME
62	ALBPA8134D	RAJENDER KRIPALSINGH KHALSA	528	1,75,247/-
63	ACBPK8244M	RAJESH KULWAL	8100	1,80,960/-
64	AABHR6766H	RAJGOPAL MALU	1215	1,64,450/-
65	AFZPPB934L	RAJNIRANI MAGANBHAI PATEL	1177	1,42,350/-
66	AHQPB7689F	RAMNIVAS BOOB	3337.5	8,76,150/-
67	ABBPS7304P	RASHMIKANT CHANDLUL SHAH	7000	1,25,740/-
68	AGYPK0291R	RAVI KANAK KUDAL	65472	4,13,862/-
69	AAIPT1707E	SATYCHARAN CHANDERDEO TIWARI	39600	8,69,962/-
70	ARMPG8458M	SHEETAL ARUN GHODKE	11835	NO ITR FILED / NO INCOME
71	ADYPD5350M	SHILPA NILESH DOSHI	55360	NO ITR FILED / NO INCOME
72	AHFRJ5491C	SHYAM SUNDER JINDAL	1960	NO ITR FILED / NO INCOME
73	AGEPB6926E	SNEH BHANDARI	29640	NO ITR FILED / NO INCOME
74	ACYPA9805B	SUBHKARAN TILOKCHAND AGARWAL	30498.8	(-) 4,44,84,537/-
75	CXKPS1853G	SULTANA SYED MUKHADAR	7700	NO ITR FILED / NO INCOME
76	AIPPA6940A	SUNIT AMBADI	15400	5,50,180/-
77	AAQHS8241H	SURESH H SHAH (HUF)	21697.5	3,82,755/-
78	BFNPS0370E	SUSHAMA SAHA	15800	NO ITR FILED / NO INCOME
79	ACKPM5445K	SUSHILA MODI	10943.4	NO ITR FILED / NO INCOME
80	ACLPS2777B	SUSMABEN SAURABHBHAI SHETH	3976	NO ITR FILED / NO INCOME
81	AGHPR3589A	SWARNIL SURENDRASINGH RAJPUT	17225	4,57,290/-
82	ADTPA1747Q	TARILKA PRATIK AGRAWAL	18744	1,79,900/-
83	AAPPA7740N	UMASHANKER SHYAMLAL AGARWAL	34225	11,78,140/-
84	AELPD7996K	UTTPAL JAYENDRA DESAI	99330	NO ITR FILED / NO INCOME
85	AEHPA5822M	VAISHALI ANILKUMAR AGRAWAL	10125	1,66,170/-
		VARSHA JAYESH BHATT	79000	1,59,400/-

Shri Bhikhatal Agrawal HUF, AY 2011-12

87	ASSPP7896H	VEENABEN ARVINDBHAI PATEL	40750	NO ITR FILED / NO INCOME
88	ALCPK7012K	VIJAY LAXMI KULSHRESHTHA	11850	NO ITR FILED / NO INCOME
89	AIWPR5537M	VIJAYABEN BHARATSINH RANA	36820	NO ITR FILED / NO INCOME
90	AMYPD2932J	VIKAS DAS	3120	NO ITR FILED / NO INCOME
91	BPKPS7933G	VIKRAM SINGH	15010	NO ITR FILED / NO INCOME
92	AKHPG7901P	VINESHWAR GUPTA	78	4,92,516/-
93	AZUPK6407A	VINOD KUMAR	7900	NO ITR FILED / NO INCOME
94	ABLPB7124J	VISHNU BANSAL	7600	1,59,310/-
95	ASSPP7895E	YOGESH DHIRUBHAI PATEL	41250	NO ITR FILED / NO INCOME

*As noticed from the above table, most of the exit providers have not furnished any return of income, despite having entered into the transactions of purchase and/or sale of shares. Further, those persons who have furnished return of income, disclosed very meagre return of income when compared to the volume/value of share transactions, executed by them.*

*Further, it is also notice from the data provided by BSE that the above exit providers have also provided/purchased shares of above company from other persons through BSE. On comparing the total income and trade value, it is clear that the creditworthiness of above persons are not enough to justify the value of trade, transacted by them. Further, the chart of movement in price of the company Vax Housing Finance Corporation Limited is reproduced as under (downloaded from moneycontrol.com.....”*



4. During the assessment proceedings, the assessing officer issued notice to the assessee to explain the above transactions with documentary evidences. However, the assessee has not submitted any reply before the assessing officer. Therefore, the assessing officer concluded that M/s Vax Housing Finance Corporation Ltd, is a listed security and sale was made through the stock exchange by paying STT since all listed security has to be dematerialized and since scrips was sold through listed Exchange, STT is to be paid. Besides, the receipt of cheques is also not in question, since it is a fact that cheques was issued to the assessee. The assessing officer noticed that the shares of this penny stock is controlled by a group of people viz promoter/operator/brokers. All purchases of shares were arranged by them on assurance of booking bogus LTCG in favour of the assessee. It is fact and evidence from the statement of several persons recorded u/s 131 that they have not only sale of shares to the assessee but also arranged for sales of shares through their entities and by paying certain amount of commission to them. Therefore, generation of LTCG through the process from purchase to receipt of cheque is totally arranged and actually no capital gain arose, but assessee's own cash has been routed through different entities and ultimately reached to his/her hand by cheque in the disguise of sale proceeds of listed security. Accordingly, the claim of capital gain is denied and assessing officer made addition to the tune of Rs. 27,05,802/- as unexplained cash credit u/s 68 of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. So far reopening of assessment is concerned, the ld. CIT(A) observed that no any non-compliance with the procedural



aspects of reopening could be seen from the assessment order and therefore the ld. CIT(A) held that the reopening of the assessment was validly done as per law. On merit Ld. CIT(A) confirmed the findings of the assessing officer.

6. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

7. Shri Vimal Desai, Ld. Counsel for the assessee, submitted that reopening of assessment in the case of the assessee for assessment year (A.Y.) 2011-12 is bad in law. The ld. Counsel took us through the reasons recorded by the Assessing Officer which is reproduced in the assessment order and submitted that all the six scrips covered under Long Term Capital Gain (in short "LTCG") were not subject to reopening and further the Ld. Counsel took through the Paper Book Page No. 15 and submitted that assessee has offered the LTCG for taxation purpose, on these six scrips, therefore, there should not be any escapement of income on the part of the assessee. The ld. Counsel also took us through the computation of total income and transactions covered by the Security Transaction Tax (STT) under Section 10(38) of the Act, which are reproduced below:





were submitted which are in the Paper Book at Page No. 3, -16. The Ld. Counsel also explained that the transactions were through banking channel, STT was paid and relevant invoices/bills and other explanation were submitted before the assessing officer. The Ld. Counsel stated that based on the facts and circumstances addition made by the Assessing Officer needs to be deleted.

10. On the other hand, the Ld. DR for the Revenue submitted that so far reopening of assessment is concerned, the assessing officer followed the proper procedure, therefore, reopening of assessment is valid and it is as per the provisions of law.

11. On merit, the Ld. DR for the Revenue submitted that it is a case of penny stock and dubious devices were adopted by the assessee to evade the payment of tax and therefore, the assessee's transactions are bogus, as the assessee failed to prove the genuineness of the transactions. The generation of LTCG through the process from purchase to receipt of cheque is totally arranged and actually no capital gain arose, but assessee's own cash has been routed through different entities. The learned DR also relied on the judgements/decisions which were relied on by the assessing officer. Therefore, Ld. DR argued that addition made by the Assessing Officer should be sustained.

12. We have heard both the parties and perused the material available on record. We note that assessee is a Hindu Undivided Family deriving income from House Property. It also invested in the share market and earned capital gain during the year under consideration. The assessee filed its return of income on 31.12.2011, declaring total income of Rs. 20,65,320/-. A copy of the return of income and computation of income for



the year under appeal, were filed along with return of income. On the basis of information received from Investigation Wing Mumbai, the A.O. recorded reasons that the assessee earned long-term capital gain of Rs. 17,33,289/- from sale of shares of Vax Housing Finance Corporation Ltd, which was claimed as exempt u/s 10(38) of the Act, and that the same was an accommodation entry. Accordingly, the A.O. reopened the case of the assessee u/s. 147 of the Act. The assessee placed on records, undisputed third-party documentary evidences such as copy of bills/contract notes, Demat account showing the movement of shares, proofs to show that the transaction was recorded in books of accounts, proofs to show that the transactions were carried out through banking channels etc, to prove the genuineness of the share transactions. It was also clarified that the assessee had neither booked any long-term capital gain from the share of Vax Housing Finance Corporation Ltd, nor claimed any exemption u/s 10(38) of the Act, in respect of the said scrip. In fact, the assessee earned a short-term capital gain and intra-day gain from the sale of shares of Vax Housing Finance Corporation Ltd, which was taxable and the assessee also paid the due taxes thereon. However, the A.O., without making any inquiries and without even refuting the documentary evidence placed on records by the assessee, doubted the genuineness of share transactions simply on the basis of inquiries/investigations carried out by the Department in case of some of the entry operators and deposition made by them to have indulged in providing accommodation entries in the several penny stocks. The A.O. also raised doubts regarding the financials of the said company. On these contentions, the A.O. issued a show-cause notice on 17.12.2018 proposing the addition of the sale proceeds on sale of shares of above-mentioned company, as unexplained cash credit u/s. 68 of the Act. In response, the assessee submitted a detailed reply on 17.12.2018 before the A.O.



However, the AO did not accept the reply of the assessee and made the addition of Rs. 27,05,803/- u/s. 68, as alleged unexplained cash credit on account of sale of shares.

13. We note that the assessee contests the validity of reopening as well as the validity of the reassessment order passed by the A.O. under the provisions of section 147 of the Act. The reasons of reopening are reproduced by the AO on Page No. 1 to 8 of the reassessment order, which we have gone through. On perusal of the reasons recorded for reopening, it may be observed that the reopening u/s 147 of the Act has been initiated in the case of the assessee, for the reasons that as per the information received from DDIT Mumbai, M/s. Vax Housing Finance Corporation Ltd. was a penny stock used for getting bogus long-term capital gain, exempt u/s 10(38) and the assessee was one of the beneficiaries who allegedly received Rs.27,05,802/-, on the sale of shares of the said penny stock. Since the assessee had shown a long-term capital gain of 17,33,289/- in their return of income, the A.O. formed an opinion that the said LTCG was claimed, as exempt in the scrip Vax Housing Finance Corporation Ltd, and the same was an accommodation entry.

**14. Having gone through the reasons recorded by the assessing officer, we noticed that the reasons recorded by the AO were factually incorrect. The sale consideration of Rs. 27,05,802/- and the LTCG of Rs. 17,33,289/-, did not pertain to the scrip of Vax Housing Finance Corporation Ltd.** In fact, the AO received information only to the extent that Vax Housing Finance Corporation Ltd which was a penny stock and the assessee was allegedly one of the beneficiaries of the accommodation entry in the form of LTCG, claimed u/s 10(38) of the Act. The above said



information was vague and incomplete. Further, the information was received by the AO most probably at the fag end of the time-barring date for issuance of notice u/s 148 of the Act. Hence, without any further verification or application of mind, the AO took up the figures of LTCG from the return of income of the assessee and formed reasons and reopened the case of the assessee. Thus, A.O. did not even bother to verify whether the assessee, in fact had claimed LTCG from the scrip of Vax Housing Finance Corporation Ltd and whether the same was claimed exempt u/s 10(38) of the Act. Hence, it is a complete non- application of mind on the part of the assessing officer while recording the reasons for reopening.

15. We find that and as submitted by the learned Counsel for the assessee that, the reality was that the LTCG of Rs. 17,33,289/-, shown by the assessee, in the return of income, pertained to the following scrips:

Name of Scrip	Sale Value	Purchase Value	LTCG/LTCL
Money Matter	19,43,694	1,38,660	18,05,034
GTL Infrastructure Ltd.	9,058	20,850	(11,792)
Reliance Industries	43,701	70,185	(26,484)
Mangalore che Fertilizer	35,325	49,500	(14,175)
Rel Pet	26,602	38,908	(12,306)
IOCL Shares	24,305	31,293	(6,988)
<b>Total.....</b>	<b>20,82,685</b>	<b>3,49,396</b>	<b>17,33,289</b>

Thus, we note that there was no LTCG in the scrip of Vax Housing Finance Corporation Ltd, as alleged in the reasons of reopening, therefore, foundations of the reasons recorded is itself wrong and hence the reopening of assessment under section 147/148 of the Act, needs to be quashed.

16. We further find that the assessee had actually carried out transactions of short term capital gain (STCG) and intra-day in the scrip of Vax Housing



Finance Corporation Ltd and not the long-term capital gain ( LTCG). Thus, the assessee had neither booked any LTCG in the scrip of Vax Housing Finance Corporation Ltd, nor claimed any exemption u/s 10(38) of the Act in respect of Vax Housing Finance Corporation Ltd, as alleged by the assessing officer in the reasons recorded. Hence, the reasons recorded by the AO were factually incorrect, and does not have any leg to stand.

17. Therefore, we note that there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer. It reflects an arbitrary exercise of the power conferred under section 147 of the Act. We find that in the reasons supplied to the assessee, there is no whisper, what to speak of any allegation, that the assessee had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. We also find that the AO was not having any material information to form "a reason to believe" that there was an escapement of income, in the assessee`s case under consideration. It is a settled position of law that the factually incorrect reasons do not confer any valid jurisdiction upon the AO u/s 147 of the Act. In this regard, we rely upon the following Direct Judgments of Jurisdictional Gujarat High Court in the case of Sunrise Education Trust Vs. ITO – 92 Taxmann.Com 74, wherein, it was held that Assessing Officer in the reasons recorded, proceeded on the erroneous footing that the assessee had not filed return at all. The first premise for issuing the notice was thus factually incorrect. It is now not disputed by the Revenue that the assessee did file return of income for the year under consideration which was duly acknowledged by the Department. The entire reasoning thus proceeded on the wrong premise that the assessee had never



filed the return. This itself would be sufficient to annul the notice of reopening the assessment.

18. In the assessee's case, we find that the AO has proceeded on fundamentally wrong facts to come to the reasonable belief and conclusion that income chargeable to tax has escaped assessment. Based on these facts and circumstances, we, therefore, quash the reassessment proceedings, for A.Y. 2011-12. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

19. In the result, appeal filed by the assessee ( in ITA No.779/RJT/2024), is allowed.

20. Now, we shall take assessee's appeal in ITA No. 780/Rjt/2024, for assessment year (A.Y.) 2016-17, wherein the assessee has raised following grounds of appeal:

*"1. Order u/s. 143(3) of the Act is bad in law.*

*2. The ld. AO has erred in law as well as on facts in making the addition of Rs. 46,46,469/-, u/s 46A of the Act. on account of long-term capital gain by denying the exemption u/s 10(34A). The ld. CIT(A) has erred in law as well as on facts in confirming the same.*

*3. The ld. CIT(A) has erred in law as well as on facts in dismissing the appeal without considering the paper-book filed by the assessee and without providing an opportunity for a personal hearing as mandated by under rule 12(3) of the Faceless Appeal Scheme and therefore the assessee deserves the cost."*

21. At the outset, learned Counsel for the assessee, informs the Bench that assessee does not wish to press ground No.1, therefore, we dismiss above ground No.1 of the assessee, as not pressed.



22. Succinct facts, qua the issue, are that assessee furnished his return of income on 30.05.2016, declaring total income of Rs. 42,53,750/-. The assessee, before us, is an HUF and derives income from the business of transportation. The assessee's case was taken up for complete scrutiny and a notice under section 143(2) of the Income tax Act, 1961, was issued on 03.07.2017 and was duly served upon through ITBA email facility on assessee. Thereafter, the assessee's case was transferred to the ACIT-Circle, Gandhidham. Thereafter, a notice u/s.142(1) of the Act, along with specific questionnaire dated 16.02.2018, was issued and served upon through ITBA email facility. Upon change of incumbency, a notice u/s.142(1) r.w.s. 129 dated 12.07.2018 was issued and served upon through ITBA email facility. Further, a notice u/s.142(1) dated 29.11.2018, was issued and served upon through ITBA email facility. In response to the statutory notices issued, the assessee has submitted the details called for vide online e-assessment facility. The assessing officer has gone through the reply of the assessee and noted that during the year under consideration, the assessee has shown exempt income of Rs. 50,04,008/-, and claimed exemption u/s 10(34A) of the Act. The assessee has submitted that the said exempt income, is on account of buy back of shares of Garg Logistics Pvt. Ltd and explained that as per Section 10(34A) of the Income Tax Act, 1961 any income arising to an assessee, being a share holder, on account of buy back of shares (other than shares listed on a recognized stock exchange) by the company referred to in Section 115QA of the Act, shall be exempt from tax, in the hands of the shareholder.

23. The assessing officer further observed that the assessee has received a total consideration of Rs.54,21,000/-, on account of buy back of shares of



2,08,500 numbers of Garg Logistics Pvt Ltd. The assessee has purchased the same for Rs.2 per shares and hence after reducing the purchase consideration, the assessee has claimed Rs.50,04,000/-, as exempt u/s.10(34A) of the Act, which states as follows:

*"Any income arising to an assessee, being a shareholder, on account of buy back of shares (not being listed on a recognized stock exchange) by the company, as referred to in section 115QA]"*

The assessing officer noted that as per the above section, the income is exempt only when the company complies with the provisions of section 115QA of the Act. It was observed from the tax working of the company, M/s. Garg Logistics Pvt Ltd, for buy back of shares of the assessee, as per provisions of section 115QA of the Act, the additional consideration was mentioned, as only Rs.2,08,500/- (Rs.54,21,000 -Rs.52,12,500), the difference between the consideration paid by the company, on buy back of shares, as reduced by the amount which was received by the company for issue of such shares, determined in the manner as may be prescribed, that is, Rule 40BB of the Income Tax Rules, 1962, is subjected to buyback tax.

24. Considering the above provisions of the Act, the assessing officer noticed that the company should pay the buyback tax on amount of Rs.50,04,000/-(Rs.54,21,000- Rs.4,17,000), as per provisions of section 115QA of the Act, r.w.r. 40BB of the Rules, but the company has violated the provision and has not paid tax as per rule 40BB and hence the amount cannot be claimed as exempt by the assessee u/s 10(34A) of the Act and since the condition are not satisfied and therefore is to be taxed as long term capital gains u/s.46A of the Act.



25. During the assessment proceedings, the Assessing Officer issued the show-cause notice to the assessee, to explain the above transaction. In response to the notice of the Assessing Officer, the assessee submitted its written submission before the A.O. stating that as per section 10(34A) of the Income Tax Act, 1961, any income arising to an assessee, being a shareholder, on account of buy-back of shares (other than shares listed on a recognized stock exchange), by the company referred to in section 115QA, shall be exempt from tax in the hands of the shareholder. During the year, the assessee has received a total consideration of Rs. 54,21,000/- on account of buy back of 2,08,500 shares of Garg Logistics Pvt. Ltd and as per section 10(34A), the same is claimed as exempt in the hands of assessee. The Copy of resolution of company, audited accounts and account of shares in the books of assessee were submitted before the A.O. In the Balance sheet for the year ended 31.03.2016, the balance number of shares shown in the Balance sheet as on 31.03.2016, there seems a typing error in the schedule attached with the Balance sheet but the total number of shares as whole are correctly shown and further individually the same has been correctly shown in the Balance sheet for year ended 31.03.2017, as previous year's figures for 31.03.2016. The MCA returns filed with the Registrar of Companies also shows the correct figures for each shareholder. The copy of Balance sheet for the year ended 31.03.2017 with corresponding figures of previous year as well as Board Report and Annual Return for 31.03.2016 were submitted before the A.O. The calculation sheet of tax, along with copy of challan of tax paid in respect of buy back of shares were also submitted before the A.O.

26. However, the Assessing Officer rejected the above submission of the assessee and observed that the assessee has purchased 2,08,500 shares for



a consideration of Rs.4,17,000/-, which is very clear from the balance sheet of the assessee, which is reflected in the balance sheet of the assessee, for the year ending 31.03.2009 and hence the purchase consideration paid by the assessee is only Rs.4,17,000/-. The company has to pay the buyback tax on the difference between purchase consideration and the buyback amount paid, that is, ( 54,21,000 - 4,17,000) = Rs.50,04,000/-, however, the company has not paid the buyback tax on Rs.50,04,000/- but paid only on Rs.2,08,500/-, which is not as per provisions of section 115QA of the Act and since the company has not followed the rule 40BB of the Income Tax Rules, the assessee cannot claim the same as exempt under the section 10(34A) of the Income Tax Act, 1961. The difference amount of net gain received by the assessee, being Rs.50,04,000/-, should be taxed, as per the provisions of section 46A of the Income Tax Act, under long term capital gains. The assessing officer, then referred the provisions of section 46A of the Act, which states as follows:

*"Where a shareholder or a holder of other specified securities receives any consideration from any company for purchase of its own shares or other specified securities held by such shareholder or holder of other specified securities, then, subject to the provisions of section 48, the difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities, as the case may be, shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities, as the case may be in the year which such shares or other specified securities were purchased by the company."*

Therefore, assessing officer, as per section 46A of the Act, computed the Long Term Capital Gains, as follows:

Sale consideration	Rs. 54,21,000/-
Purchase cost	Rs. 4,17,000/-
Indexed cost (from 2008)	Rs. 7,74,531/-
<b>Long Term Capital Gains</b>	<b>Rs.46,46,469/-</b>



27. Aggrieved by the order of the Assessing Officer, the assessee, carried the matter in appeal before the Ld. CIT(A), who has confirmed the action of the Assessing Officer. The Ld. CIT(A) noticed that as per the working of the ld.AO (noted above), the LTCG on sale of these shares to the company as buy-back is Rs.46,46,469/-. The Ld. CIT(A) also noticed that assessee submitted contradictory and self-conflicting information in its statement of facts (SoF) filed before the first appellate authority (FAA), which is very baffling. In para 5 of SoF, the assessee says purchase cost per share is Rs.2 in the hands of the assessee and in para 6 of SoF the purchase cost per share is Rs.25 in the hands of the assessee. Therefore, Ld. CIT(A) noticed that the assessee is adopting two different costs, viz., (i) cost of Rs.2 per share for claiming LTCG exemption and (ii) cost of Rs.25 per share for payment of tax by the company on payment of tax. Therefore, the Ld. CIT(A) was of the view that with such conflicting information, the ground of appeal of the assessee, cannot be adjudicated and hence, grounds of appeal of the assessee were dismissed by the ld. CIT(A).

28. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

29. The Ld. Counsel for the assessee submitted that the company from whom the assessee has purchased the shares, has enter into the buy back of share transaction and in the course of buy back of share transaction, the assessee got the money, which is exempted under Section 10(34A) of the Act. For this purpose, the Ld. Counsel for the assessee took us through the provisions of section 10(34A) of the Act, which are reproduced below:



“(34A) any income arising to an assessee, being a shareholder, on account of buy back of shares by the company as referred to in section 115QA.”

30. Then after, the Ld. Counsel took us through the provisions of section 115QA of the Act, which are reproduced below:

“**115QA.** (1) Notwithstanding anything contained in any other provision of this Act, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount of distributed income by the company on buy-back of shares from a shareholder shall be charged to tax and such company shall be liable to pay additional income-tax at the rate of twenty per cent on the distributed income:

**Provided** that the provisions of this sub-section shall not apply to such buy-back of shares (being the shares listed on a recognised stock exchange), in respect of which public announcement has been made on or before the 5th day of July, 2019 in accordance with the provisions of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992):

[**Provided further** that the provisions of this sub-section shall not apply in respect of any buy-back of shares, that takes place on or after the 1st day of October, 2024.]  
Explanation.—For the purposes of this section,—

- (i) "buy-back" means purchase by a company of its own shares in accordance with the provisions of any law for the time being in force relating to companies;
- (ii) "distributed income" means the consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares, determined in the manner as may be prescribed.

(2) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of this Act, the tax on the distributed income under sub-section (1) shall be payable by such company.

(3) The principal officer of the domestic company and the company shall be liable to pay the tax to the credit of the Central Government within fourteen days from the date of payment of any consideration to the shareholder on buy-back of shares referred to in sub-section (1).

(4) The tax on the distributed income by the company shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the company or by any other person in respect of the amount of tax so paid.

(5) No deduction under any other provision of this Act shall be allowed to the company or a shareholder in respect of the income which has been charged to tax under sub-section (1) or the tax thereon.”



31. Referring to the provisions of Section 10(34A) of the Income Tax Act and Section 115QA of the Income Tax Act, noted above, the Ld. Counsel for the assessee contended that any income arising to the assessee, being a shareholders, on account of buy back of shares, by the company are exempted from tax in the hands of the assessee (shareholder). Referring to the provisions of Section 115QA of the Act, the Ld. Counsel also submitted that any amount on distribution of income by the company, on buy back of shares from shareholder, shall be charged to tax and such company shall be liable to pay additional tax @20% on the distribution of income. Therefore, Ld. Counsel submitted that the assessee, is a shareholder, who got the shares which have been bought back by the company and on that account the assessee, being a shareholder got money, which is exempted under Section 10(34A) of the Act. In the assessee's case under consideration, the assessment year involved is the assessment year 2016-17. Therefore, provisions of Section 10(34A) of the Act, is applicable to the assessee company, under consideration and therefore, the assessee- company has to pay the tax on buy back and not the shareholder and hence the addition by the Assessing Officer should be deleted.

32. On the other hand, Ld. D.R. for the Revenue submitted that the assessee under consideration is not the original shareholder. The shares were transferred from original share holder to assessee, under consideration, therefore and it is not exempted in the hands of the assessee (being subsequent shareholder). Therefore, assessee under consideration is liable to pay the income tax, as computed by the assessing officer.

33. We have heard both the parties and perused the material available on record. The assessee is a Hindu Undivided Family, deriving income from



the business of transportation. The assessee filed its return of income for A.Y. 2016-17 on 30.05.2016, declaring total income at Rs. 42,53,750/-. The case of the assessee was selected for complete scrutiny and the assessment proceedings were initiated by issuing notice u/s 143(2) of the Act, on 03.07.2017. During the assessment proceedings, the AO inquired about the assessee's claim for exemption under section 10(34A) of the Act in the return of income. The assessee submitted that the said exempt income is on account of the buyback of shares of Garg Logistics Pvt. Ltd, and explained that, according to Section 10(34A) of the Income Tax Act, 1961, any income derived by a shareholder from the buyback of shares by a company is covered under Section 115QA of the Act, hence, assessee is eligible for exemption from taxation in the hands of the shareholder and the company is required to pay tax on such buyback under the provisions of section 115QA of the Act.

34. We note that assessing officer, during the assessment proceedings, contended that income from the buyback of shares is exempt in the hands of the shareholder only when the company complies with the provisions of section 115QA of the Act. The A.O. was of the view that the company has violated the provisions of section 115QA and has not paid tax accordingly. Hence, the A.O. denied the exemption u/s. 10(34A) of the Act, and made the addition of long-term capital gain u/s. 46A of the Act.

35. We note that assessee had purchased 2,08,500 shares of Garg Logistics Pvt. Ltd. at the rate of Rs. 2/- per share from other shareholders. The shares were bought back by the company at the rate of Rs. 26/- per share on the buyback scheme of such shares. Hence, the assessee earned an income of Rs. 50,04,000/-, which was claimed as exempt u/s 10(34A) of the Act. The



Garg Logistics Pvt. Ltd. has bought back the shares at the rate of Rs. 26/- per share which were originally issued by the company at Rs. 25/- per share (Face value of Rs. 10/- and Share premium of Rs. 15/-). Hence, the company has correctly paid tax on Rs. 1/- per share (Rs. 26/- less Rs. 25/-) being the difference between the buyback price and the amount which was received by the company for issue of such shares. Therefore, the company has duly complied with the provisions of section 115QA of the Act. The assessee placed on records sufficient documentary evidences in this regard to substantiate its claim. However, the A.O., without appreciating the submissions of the assessee and in gross violation of the explicit provisions of section 115QA, contended that the company has to pay the tax on Rs. 50,04,000/- being the difference between the purchase cost of the assessee and the buyback amount paid but the company had paid tax only on Rs. 2,08,500/- which was not as per the provisions of section 115QA of the Act and accordingly made the addition of Rs. 46,46,469/- on account of long-term capital gain after giving the benefit of index cost, in the hands of the assessee.

36. Considering the above facts and circumstances, we note that the addition made by the AO is in complete violation of the provisions of section 115QA of the Act, as noted above. The manner of calculation has been prescribed in Rule 40BB of the Rules which, inter alia, prescribes that where the shares were issued at premium, such premium shall also be reduced while calculating the distributed income. The relevant part of the Rule 40BB, is reproduced below for ready reference:

*“(1) For the purposes of clause (ii) of the Explanation to sub-section (1) of section 115QA, the amount received by a company in respect of the share issued by it, being the*



subject matter of buy-back referred to in the said section, shall be determined in accordance with this rule.

(2) Where the share has been issued by a company to any person by way of subscription, amount actually received by the company in respect of such share including any amount actually received by way of premium shall be the amount received by the company for issue of such share.

(3) Where the company had at any time, prior to the buy-back of the share, returned any sum out of the amount received in respect of such share the amount as reduced by the sum so returned shall be the amount received by the company for issue of said share. to (13) ..... ”

37. From the above provision, it is crystal clear that the company is required to pay tax on the buyback of shares in the following manner:

Buyback price (i.e. the price at which the shares are being brought back by the company)	-----
<b>LESS :</b> The price at which the shares were issued by the company (i.e. issue price including share premium)	-----
Distributed income liable for buyback tax	-----

38. Since the company is liable for making payment of tax on buyback of shares, the shareholder gets exemption from capital gain under section 10(34A) of the Act. The said provision is reproduced below again for ready reference:

“any income arising to an assessee, being a shareholder, on account of buyback of shares by the company as referred to in section 115QA”

Section 115QA clearly states that the amount of distributed income by the company on the buyback of shares from a shareholder on which the company is liable for tax means the consideration paid by the company on the buyback of shares as reduced by the amount that was received by the



company at the time of issuance of such shares. In the present case, the amount that was received by the company, M/s. Garg Logistics Pvt. Ltd. at the time of issuance of such shares was Rs.25 per share and not Rs.2 per share. Therefore, it is very much clear that M/s. Garg Logistics Pvt. Ltd. paid tax on the buyback of shares according to provisions of section 115QA and there was no violation whatsoever. It is pertinent to note that the buyback tax paid by M/s Garg Logistics Pvt. Ltd. has been accepted in their case. Once the compliance of the provisions of section 115QA has been accepted in the case of the company, there was no justification for the AO to question the same in the case of the assessee, shareholder. As a matter of fact, the AO cannot have any jurisdiction to decide whether the company has properly paid the buyback tax u/s 115QA or not, in the assessment of the assessee, under consideration. Thus, we note that the AO has exceeded his jurisdiction.

39. We also note that the sole contention of the AO is that the company M/s. Garg Logistics Pvt. Ltd has incorrectly paid the taxes due on buyback of shares and therefore, he withdrew the exemption u/s 10(34A) claimed by the assessee. We find that there is no provision either in section 115QA or in section 10(34A), empowering the AO to withdraw the exemption u/s 10(34A), of the shareholder on the ground of improper tax payment by the company buying back the shares. Even if it is assumed for the sake of argument for a moment that the company M/s. Garg Logistics Pvt. Ltd did not pay proper tax on buyback u/s 115QA of the Act, then in such case, recovery proceedings can be initiated against the principal officer of the company or against the company as per section 115QC of the Act. For ready reference, the provisions of section 115QC of the Act are reproduced hereunder:



“If any principal officer of a domestic company and the company does not pay tax on distributed income in accordance with the provisions of section 115QA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.”

Therefore, it is vivid from the above provisions that in the absence of any enabling provision, the exemption u/s 10(34A) of the Act, claimed by the shareholder cannot be denied. The exemption u/s 10(34A) triggers the moment the buyback of shares falls under section 115QA of the Act and the company becomes liable for payment of tax under the said section. This exemption is not further dependent upon the actual tax payment by the company. In the absence of actual tax payment or short/improper tax payment, the recovery has to be made from the company and there is no provision for recovery from the shareholder by way of denial of exemption u/s 10(34A) of the Act. Hence, even on this count, the addition made by the AO, in the case of the assessee, is unsustainable. Therefore, based on these facts and circumstances, we delete the addition of Rs. 46,46,469/-, and allow the appeal of the assessee.

40. In the combined result, both appeals filed by the assessee, are allowed.

Order is pronounced in the open court on 21/08/2025

Sd/-  
**(DINESH MOHAN SINHA)**  
JUDICIAL MEMBER

Sd/-  
**(Dr. A.L. SAINI)**  
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 21/08/2025

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File



By Order

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot